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CEREBRAL
PALSY
ASSOCIATIONS

Advancing the independence of people with disabilities

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FEDERAL COMMUNICATIONS COMMISSION
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October 28, 1996

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Office of the Secretary
Federal Communications Commission (FCC)
1919 M Street NW
Washington, DC 20554

RE: In The Matter of Implementation of Section 255 of the Telecommunications Act of 1996 "Access to Telecommunications Services Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities" WT Docket No. 96-198

Dear Sir or Madam:

On behalf of United Cerebral Palsy Associations, I am submitting an original and nine copies of our Comments in this matter. A disk version is also submitted.

Please feel free to contact me if you have questions or concerns at Tels: (800) USA-5UCP or (202) 776-0406 or via Fax: (202) 776-0414.

Sincerely,

Jenifer Simpson
Community Services Division

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Before the Federal Communications Commission
Washington, DC 20554

In The Matter of

Implementation of Section 255 of the)	
Telecommunications Act of 1996)	
"Access to Telecommunications Services,)	WT Docket No. 96-198
Telecommunications Equipment, and Customer)	
Premises Equipment by Persons with Disabilities")	

**COMMENTS BY UNITED CEREBRAL PALSY ASSOCIATIONS
ON THE NOTICE OF INQUIRY**

October 28, 1996

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TABLE OF CONTENTS

	PAGE
Introduction and Summary	3
FCC Must Promulgate Rules	4
FCC Must Consider Providers of Telecommunications Services in Broadest sense	4
Make Communications Access Comprehensive	5
CPE and Network Infrastructure Are Both Subject to Sec. 255	5
Harmonization of International Standards Should be Encouraged	6
Licensors and Licensees Equally Responsible	6
Include Speech Disability Examples in Voice Telephony Discussions	7
Definition of Disability is Both Broad and Functionally-Based	7
Having a Record of Disability Should Also be Covered	8
Individuals Who Appear Disabled Need Protection Also	8
Ongoing Obligation For Accessibility Must Be Maintained	9
Accurate Measuring of Costs and Resources Necessary	9
Costs Discussion Must Include Costs to Persons With Disabilities	10
Costs For Those With Speech Disabilities	11
Broad Scope Required in Assessing Resources of Providers	11
U.S. Can Be Leader in Global Markets	12
Invoking ADA Cannot Be An Excuse for Non-Compliance	12
Define CPE Broadly Using Existing Disability Technology Language	13
Importance of Secs. 255/6 Relation to Section 251	14
Service Specific Rules Will Assist in Expansion of Universal Design	14
Adoption and Periodic Review of Access Board Guidelines	15
Make All Avenues of Complaint Accessible to Persons With Disabilities	15
Conclusion	16

Introduction and Summary

United Cerebral Palsy Associations (UCPA) is a national nonprofit membership association of 153 affiliates in 43 states that delivers in excess of \$500 million of services annually to individuals with disabilities, including many persons with cerebral palsy and similar developmental disabilities. Significantly, two-thirds of individuals with cerebral palsy experience speech disabilities, typically with little or no clear speech. UCPA affiliates are very familiar with the difficulties encountered by persons with speech disabilities as they attempt to utilize existing voice-based telephony. We believe that the telecommunications industry, under the new regulatory regime of P.L. 104-104, must address speech disability access as a consequence of Section 255 implementation so that barriers to communication will fall.

There are more than 500,000 individuals with cerebral palsy and similar disabilities in the United States. In addition, currently about 5,000 babies and infants are diagnosed with the condition each year and some 1,200 to 1,500 pre-school age children acquire cerebral palsy annually. Cerebral palsy is a term used to describe a group of chronic conditions affecting body movement and muscle coordination (not a disease or illness) that directly affects motor, including speech, abilities.

UCPA is instrumental in furthering a policy agenda that shifts the high cost of adapted and adaptive technology devices from persons with disabilities into and across the marketplace. This concept was a fundamental assumption in developing disability access provisions in the new Telecommunications Act. Disability consumer advocates are very familiar with the out-of-pocket costs, both to individuals with disabilities and their families and households, and with the scope of what amounts to a publicly-funded subsidy of telecommunications by public programs for persons with disabilities.

Rulemaking processes are a critical tool in policy development when the market has not historically addressed issues such as disability access. UCPA urges the Commission to move to full rulemaking on Section 255 due to the importance of these provisions. A Rulemaking will affect our affiliates and the individuals they serve, in addition to millions of other persons with disabilities and their families in America.

Formal rules are preferable for several reasons, including, consistency with the interagency format adopted under The Americans With Disabilities Act, offering a means for adopting the U.S. Access Board Telecommunications Access Advisory Committee guidelines, providing a uniform process that would give everyone opportunity for input based on known ground rules, insuring wide as possible dissemination of the guidelines through the CFR and Federal Register, and demonstrating that the Commission takes this matter seriously.

UCPA submits Comments¹ in response to the Notice of Inquiry initiated by the Federal Communications Commission (FCC) last month. These comments are organized by the NOI's paragraph numbering.

¹ This document is available in alternate format (disk or large print).

PARAGRAPH 7 OF THE NOTICE ASKS: *"... we seek comment on policy reasons for the Commission to exercise various aspects of our authority in order to best effectuate the requirements of Section 255."*

UCPA urges the FCC to promulgate rules, pursuant to existing provisions in the Communications Act for enforcement of Sec. 255.

Promulgation of rules is critical to ensuring that telecommunications manufacturers and service providers fully understand their obligations to provide access throughout the design, development and fabrication phases of their equipment and services. Without such regulations, companies will lack the guidance needed to incorporate concepts of universal design into their design processes. Universal design seeks to ensure consideration of the access needs of all individuals, including individuals with the full range of disabilities, when designing and fabricating new telecommunications products and services. In order to incorporate the concept of universal design into a company's practices, it is pivotal for the FCC to issue regulations that require companies to consider and meet access needs at the earliest stages of their product and service development. Without clear guidance from the FCC to the industry, companies may intentionally or unintentionally ignore access needs at the decisive early stages. UCPA Telecomm notes that once the products and services are manufactured or deployed it becomes much more costly and burdensome to retrofit those products or services for access.

Numerous rulemaking proceedings, such as those implementing laws on telecommunications relay services, hearing aid compatibility, and decoder-equipped televisions, have demonstrated the FCC's historical commitment to ensuring disability access in telecommunications. UCPA urges the FCC to continue this trend toward reversing decades of discrimination against individuals with disabilities. Full and complete access to our nation's ever-expanding telecommunications equipment and services is critical to ensuring the inclusion, independence, empowerment, and integration of persons with disabilities into every arena of American society. As a guiding principle in the development of national policy, attention to universality of design as a principles means a better society for all. Toward that end, rules will be necessary, for the market has not historically addressed and responded to the need for disability access.

Furthermore, a complaint process without guidelines or rules would contribute an unacceptable degree of vagueness and uncertainty for consumers and industry alike. An unsupported complaint process would give the Commission little basis for resolving issues not covered by the Access Board and it would leave the public uncertain as to what they could reasonably expect by way of accessibility and unsure of the scope of the law. More seriously, the telecommunications industry could be subject to criticism and possibly protracted administrative litigation without any clear means of knowing what it must do to avoid the risks of criticism and of sanctions.

PARAGRAPH 8 OF THE NOTICE ASKS: *"... we seek comment on whether the term 'provider of telecommunications services' requires further clarification or definition in the context of Sec 255."*

UCPA urges the FCC to consider providers of telecommunications services in the broadest possible sense as the industry and its current regulatory infrastructure is changing rapidly. For instance, currently there are no access charges for Enhanced Service Providers (ESPs) and thus they do not

contribute to the Universal Services fund. However, it is clear that traffic is expanding rapidly by ESPs and the range and type of services they provide is expanding and likely to expand as new products and services are developed, e.g., longdistance voice telephony over the Internet. Therefore, application of Sec. 255 should address all providers as convergence occurs.

A rulemaking for providers would assert that individuals with disabilities will not be subject to discrimination or otherwise denied access to networks, products and services through unfair policies, practices or other procedures at all levels of service provision. For instance, a provider selling a bundle of services, which might include longdistance voice telephony and email, could not offer this product without addressing the need for some customers to bypass or to opt-out or otherwise make accessible a Graphical User Interface that would effectively bar usage of the bundle of services by persons with vision disabilities who log-on or subscribe through a communications appliance. Similarly, a provider that makes available a voice-driven service such as number-dialing, would have to address how persons with severe speech or hearing disabilities would utilize this service. There would have to be alternatives available if the service utilizes one sensory input, such as a voice, to permit those with hearing or other disabilities to have access.

Make Communications Access Comprehensive

The rulemaking for providers would emphasize that communications accessibility means making all forms of expression, transmission and reception of electronic communications accessible to persons with disabilities, and recognizes that every individual is capable of choosing the method, medium and content of communication most appropriate for himself or herself. This gives providers of services and manufacturers of products the flexibility they need to meet the demand of the requirement.

PARAGRAPH 10 OF THE NOTICE ASKS: *"... we seek comment on ... issues concerning the scope of CPE and other equipment used in conjunction with telecommunications services, and the corresponding accessibility obligations of manufacturers of such equipment."*

CPE and Network Infrastructure Are Both Subject to Sec. 255

'Section 251 Interconnection' specifically states that telecommunications carriers must *"not install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to Sections 255 or 256"*. While many network features, functions and capabilities are already known as part of telecommunications services provision, it is likely that additional features, functions and capabilities will emerge and be made available -- or installed -- by telecommunications carriers as new technology emerges, as older technologies and mediums converge and as new companies enter 'local competition'. For these reasons, UCPA recommends the FCC to emphasize and highlight the link with Section 251 in any rulemakings involving Sec. 255, and to broadly define network features, functions or capabilities as installed services so that every class or type of service provided will be made accessible as it will be subject to the disability access 'universal design' mandate.

In rulemaking, the FCC should assert that individuals with disabilities shall pay rates no greater than the rates paid for functionally equivalent services with respect to such factors as the duration of the call, product or service, the extent of technical connectivity, the time of day and geographic distance involved in achieving the call, product or service. This would involve the complex interactions between equipment and services that network interconnection may raise in regard to CPE and the relationship

with networks. For example, how one network may interconnect with another could pose a technological barrier for access by a particular device or service that has already been made disability accessible unless this aspect was looked at prior to interconnection occurring.

PARAGRAPH 11 OF THE NOTICE ASKS: *"We also ask commenters to consider the effect of differing national equipment accessibility standards on how manufacturers ability to design, develop and fabricate accessible equipment should be when evaluating complaints. When considering what accessibility measures are readily achievable, should the Commission give weight to the different standards confronted by a manufacturer with markets in other nations?"*

Harmonization of International Standards Should be Encouraged

In its rulemaking, the Commission should encourage U.S. government agencies to seek harmonization of access requirements through multilateral agreements. However, the presence of multiple standards and requirements should in no way thwart the intent of Congress to bring about access to telecommunications technology for Americans with disabilities through the enactment of Sec. 255. UCPA encourages telecommunications companies to take full advantage of global communications networks to work with the growing research community of disability research and expertise on access issues without regard to the nation in which that expertise resides.

PARAGRAPH 12 OF THE NOTICE ASKS: *"To the extent that some manufacturers design, develop and fabricate equipment but then license their equipment design to other manufacturers for production, how should Section 255 apply to the secondary manufacturers or resellers? We seek comment on these questions "*

Licensors and Licensees Equally Responsible

In its rulemaking on Sec. 255, the FCC should assert that manufacturers have an obligation when marketing products and services in the United States (or the territorial range of the FCC) to provide accessibility for individuals with disabilities. This means manufacturers, regardless of their national affiliation or location, must comply with Section 255. See also UCPA Comment on Paragraph 15 below on "definition of readily achievable".

In its rulemaking on Sec. 255, the FCC should assert that licensing agreements should contain clauses reflecting equal responsibility by licensor and licensee for ensuring meeting the requirements of Sec. 255. Since it is design itself which is subject to the mandate, each component of the design must necessarily be subject to the principle of the mandate, regardless of component source. Manufacturers who license their equipment design to others for manufacture have a duty to comply with Sec. 255 as the mandate applies to design, development and fabrication and cannot be subverted through transferral of responsibility. Similarly, such secondary manufacturers or resellers should also ensure that the equipment design for which they are securing licensing, is in compliance with Sec. 255. In short, no company should be licensing another manufacturer for a product design that is not in compliance with the disability access mandate. Similarly, licensees bear equal responsibility in ensuring that the design itself is disability accessible.

PARAGRAPHS 13 and 14 OF THE NOTICE ASK ABOUT THE DEFINITION OF DISABILITY:

"We seek comment on the application of this definition in the context of access to telecommunications services and equipment. It is clear that, under the first element of the definition, many individuals with a physical or mental impairment are limited in their access to telecommunications equipment and services. For example, hearing and vision disabilities may impede use of traditional voice telephone services, the latter by obstructing dialing and the use of visually displayed information."

Include Speech Disability Examples in Voice Telephony Discussions

UCPA was disappointed to see little to no mention of **speech disability** as an example of those with disabilities facing barriers when using traditional voice telephone services. This is a serious omission as current voice-based telephony, even rotary dial service, presents multiple barriers to persons without clear or recognizable speech.

There are an estimated 750,000 to 1.5 million Americans of all ages who have severely limited speech which cannot be easily understood. Approximately 30 percent of persons with cerebral palsy are in this group, and 85 to 90 percent of all individuals with cerebral palsy have a speech disability of one kind or another.

Others estimate there are another 3 million persons who lose speech capacity each year, either permanently or temporarily, as a result of traumatic brain injury, stroke or other accident or injury. Currently there are an estimated 14 million Americans with speech disabilities. Individuals with speech disabilities are often unable to use the present existing voice telephone networks because of the lack of accommodation made to speech disabilities and a lack of recognition of the problem. These individuals may, or may not, be benefitting from advanced or enhanced telecommunications equipment and services in order to search for or maintain employment, attend school, socialize or otherwise be included in general activities of humans. Many believe there could be technical solutions to these barriers if telephony and other networks were designed with such access in mind.

UCPA urges the FCC to be sure to always include speech disability as an example of consumers who face barriers to access and use of traditional voice telephone services as this is one population with a disability who is often left out of examples given in rulemakings.

Definition of Disability is Both Broad and Functionally-Based

Although the new telecommunications statute includes only the first prong of the ADA definition of disability, UCPA urges the FCC to address disability reflecting a more functional and broad-based approach as evidenced in the House bill and in the Senate report language.

UCPA believes that there may be instances where the second and third prongs of the definition of disability as found in the ADA would pertain and asks the FCC to incorporate such possibility in the rulemaking through application of the scope of disability that the House and Report language would incorporate.

There is little doubt that as universal service evolves and the unbundling, and rebundling, of service elements proceeds, capitalization of current transaction records, or the opening and sharing of transaction records is likely to occur. Hence, as the communications industry restructures and reforms,

telephone transaction generated information (TTGI) will become more and more valuable as markets for new services and products are explored.

Having a Record of Disability Should Also be Covered

In regard to persons for disabilities, for instance, there may be a record that a person is a TTY user, or has been a user of Speech-to-Speech services. There may be other indications that a subscriber has in the past utilized or still utilizes Telephone Relay Services or some other disability accessibility service or accommodation. A service provider, utilizing such records, may assume and treat differently such subscribers, to their detriment, either in fiscal services provision or in network services.

There is need for telecommunications services providers to ensure integration of new services and to ensure protection by persons with disabilities from discriminatory actions resulting from new services provision. For instance, for some individuals with disabilities, a telephone delivery service is essential for purchase of items such as food, transportation, clothes and entertainment. Similarly, for those individuals whose employment depends, or may depend, on electronic network capacity to send, retrieve or manipulate information, their usage of certain electronic information networks or services as part of their employment may generate differing patterns of TTGI than those developed by individuals without disabilities.

TTGI recordkeeping, as it relates to services provision, must be subject to the context and intent of Section 255. As a new service is developed, a telecommunications services provider may be utilizing information generated from TTGI research and must not be permitted to discriminate against persons with disabilities. On the other hand, TTGI records that indicate usage by a household with a person with a disability or by a person with a disability at a workplace may also be a way to reach persons with disabilities and expand markets.

Individuals Who Appear Disabled Need Protection Also

The definition of disability within ADA also pertains to those individuals who are considered disabled based on their physical appearance. For instance, ADA protects those who are perceived as disabled due to their appearance. This could be those with facial or other physical anomalies as a result of scarring from fires, or surgery, or with cleft palates or other unusual bone or structural formations that a person may perceive as a disability. Persons with unusual heights, weights, variegated or unusual melanin or other atypical skin pigmentation may also fall into this category and are protected from discrimination under the ADA.

In regard to telecommunications access, the issue may arise as technology advances. For instance, if video telephony becomes a common or easily-accessed service for the average population, and if it includes elements of universal service, such as "0", "411" or "911" assistance, or otherwise the service requires a human interface to initiate, carry or complete the call, the potential for discrimination based on the visual appearance of the calling person, exists. The refusal to complete the call, make the call or to refuse to take the call by the human interface would be a form of disability discrimination.

For instance, persons with cerebral palsy who drool and persons with certain eye-muscle disabilities currently experience face-to-face discrimination by waitpersons in restaurants, by bus drivers and other service personnel where an assumption is made that they are 'drunk' or 'stupid' or otherwise incapable.

Currently, those who use voice-based telephony with speech disabilities report being disconnected ('hang up') on by operators during "0", "411" and "911" service provision due to lack of familiarity with speech disability and techniques used to generate voices, such as electronic augmentative communication prostheses. Even Relay Services Communications Assistants are subject to disconnection on announcing relay service calls for both users with hearing and with speech disability. It is likely that new forms of disconnection will occur during video telephony based on assumptions about a person's appearance. Sec. 255 should cover these instances as well.

Other telecommunications services may be developed also that would be subject to Sec. 255 requirements as technology changes. Rejection of service because of the myths, fears, and stereotypes associated with disabilities should be incorporated into the FCC's understanding of the scope of disability discrimination that can and could occur.

UCPA takes the position that the definition of disability found in the new Telecommunications Act was intended to cover a broad range of disability and to incorporate all instances of disability discrimination. We believe it will be in the provision of **telecommunications services** that providers -- at the service personnel end -- will likely err in not making their services accessible to and usable by individuals with disabilities. We urge inclusion of examples as noted above must be included in any rulemaking by the FCC on Sec. 255.

PARAGRAPH 16 OF THE NOTICE ASK ABOUT THE DEFINITION OF 'Readily Achievable':

"We seek comment on the factors we should consider in attempting to apply the components of the ADA definition ... to telecommunications equipment and services."

UCPA agrees with the Commission that what is "readily achievable" can be an ever-changing dynamic and that an accessibility solution which is difficult or impossible to implement at one point may become an established cost-effective technology a short time later.

Ongoing Obligation For Accessibility Must Be Maintained

UCPA believes that providers of telecommunications services and manufacturers of equipment are under an ongoing obligation to make the service or product accessible as new technology comes along that makes access readily achievable. Also, manufacturers and providers cannot be permitted to ignore new technologies. The ongoing obligation applies whether or not a particular product or service is upgraded. As the obligation affects an existing product or service, it would be reasonable, however, to grant lead time to permit the provider or manufacturer to come into compliance.

Accurate Measuring of Costs and Resources Necessary

UCPA believes it is important to guard against the inappropriate use of the "readily achievable" relief in all Sections of 255, i.e., (b) Manufacturing, (c) Telecommunications Services and (d) Compatibility. It is essential that costs and resources required to achieve disability access be measured accurately and allocated fairly. The Commission must ensure that only those expenses actually incurred by covered manufacturers and service providers in efforts to achieve accessibility are measured. Complementary or corollary benefits resulting from disability access, e.g., improved design, usability or functionality

for all customers should also be measured so that these "value added" factors are weighed against the accessibility costs in the ultimate determination of what actions are "readily achievable."

PARAGRAPH 17 OF THE NOTICE ASKS ABOUT THE "COSTS: FINANCIAL RESOURCES" CONSISTENT WITH THE ADA DEFINITION OF 'Readily Achievable': *"We ask commenters to supply pertinent information regard ... types and levels of costs ... and cost savings when accessibility is achieved"*

Costs Discussion Must Include Costs to Persons With Disabilities of Non-Compliance

UCPA believes that the benefits of accessibility features in telecommunications products and services are as important as are the costs to manufacturers and providers when in compliance with the universal design principles of this mandate. Any discussion about cost estimates should address a number of factors such as the benefits of assistive devices, accessibility features and other accommodations to individuals with disabilities in the aggregate. Factors to include would be the determination of direct and productivity-related benefits, the cost savings or 'avoided costs' or 'opportunity costs' for individuals with disabilities, in addition to benefits to society and other measures. Using a broad range of cost parameters establishes the importance of accessibility features in the lives of persons with disabilities.

For instance, it is possible to calculate the direct cost savings that can be measured for an individual with a disability in terms of moving from a public program to private employment when access to voice telephony, for instance, is equalized through purchase of adapted equipment and services. Additionally, there are indirect benefits accruing from enhanced productivity or acquisition of human capital such as increases in level of training or education or other 'human investment' capacity as a result of an accessibility feature.

Costs to accommodate persons with disabilities access to telecommunications -- to permit 'a voice' and 'to be heard' in current voice-telephony based universal service -- includes out-of-pocket costs of the individual with a disability in addition to costs borne in public programs for assistive or adaptive devices. For instance, deaf and hard-of-hearing people pay high costs for Text Telephones or TTYs (an average of \$200 to \$500 each) or for telebrailles (\$6,000 each); those with speech disabilities may pay as much as \$10,000 for a digital linguistics-based augmentative communication device; for those with vision disability screen viewers to read computer information the average cost is \$5,000, that is assuming the on-screen material is text-based.

For a person with a motor disability and speech capability, voice activated dialing -- available to every subscriber -- at \$4.95 per month compares well with the cost of an adaptation to the phone which costs \$250, or if through a computer system, \$1,000. If more of these modalities were built into the networks these costs, and the increased access could be used by everyone.

An example of this cost migration exists in recent history: before the provisions of the Television Caption Decoder Circuitry Act of 1988 took effect, caption decoding devices utilized by deaf people cost upwards of \$300 each. The cost of this same technology, now required by law to be part of every television set sold in the U.S. (with a screen size of 13" or greater) is now under \$1! There is every

reason to expect the unit cost of adaptive technologies to drop by several orders of magnitude as a result of appropriate, well-considered regulations from the FCC implementation provisions of Sec. 255.

Costs For Those With Speech Disabilities

UCPA has found that persons with speech and physical disabilities purchase telephones with significant features that address their disability or purchase adaptive or adapted equipment in order to utilize voice-based telephony. This includes items such as external or extension speakers, phone guards, cassette recorders (to record 411 answers), hook-up/wiring for PC, activating switches, headsets and amplifiers. They spend significant amounts of out-of-pocket and other monies to purchase adaptive or adapted equipment in order to utilize voice-based telephony. About one third of persons with cerebral palsy buy equipment to make the telephone work for them, averaging \$500.

These costs are borne in several ways. Medicaid is a significant source utilized by a third of persons with cerebral palsy, with another third buying out of pocket. Less than ten percent is paid for by other private sources, such as non-profit disability agencies or private charities. Alternative sources of public funding include the Vocational Rehabilitation systems which funds about 9 percent and school systems in about 4 percent of cases. Other public sources include state technology or mental-retardation & developmental disability agency programs. It is likely that other populations of persons with disabilities may reflect similar public funding of technology.

UCPA believes that significant savings may be generated in public programs which purchase current expensive specialized adaptive equipment for individuals with disabilities if costs are shifted across universal service provision through the universal design approach of the disability access requirements.

Additionally, any cost analysis should also address the benefits accruing to society when a person with a disability can access the same level of services and products as average persons. Increased tax revenues and reductions in public sector transfer payments due to obtaining employment are examples of general societal benefits when a speech or hearing disabled person, for instance, can use the voice-based network to inquire about a job, set up an employment interview, order a cab, and conduct follow-up via the phone.

UCPA's experience with securing technology for persons illustrates the principle that while technology may be a luxury or enhancement for typical persons, for a person with a disability it may be key to living a regular life at all.

PARAGRAPHS 18 and 19 OF THE NOTICE ASKS ABOUT THE "COSTS: FINANCIAL RESOURCES" IN REFERENCE TO FINANCIAL RESOURCES OF PROVIDERS: *"We also seek comment regarding "overall financial resources of the facility or facilities involved in the action" and the "overall financial resources of the covered entity"*

Broad Scope Required in Assessing Resources of Providers

UCPA believes that the intent of the law here is the entire operations and resources of a parent corporation and its subsidiaries must be taken into consideration when calculating the resources available to cause products and services to be accessible to and usable by persons with disabilities. This is the

intent within the meaning of the terms derived from the Americans With Disabilities Act and this intent is carried over into this Act.

Specific aspects of the structure of telecommunications companies may influence the determination of what is readily achievable. For instance, regulated and unregulated lines of business, antitrust decrees, structurally independent divisions within a company. These structural issues will influence a company's overall duty to ensure access overall duty to people with disabilities to its products or services. Specific legal limitations will affect the flexibility of a company, but neither the corporate structure or structural anomalies must be used as a way to improperly shield a company from maximum efforts to achieve accessibility.

PARAGRAPH 20 OF THE NOTICE ASKS ABOUT THE "COSTS: FINANCIAL RESOURCES" IN REFERENCE TO FOREIGN AND DOMESTIC MARKETS WHERE DIFFERENT REGULATORY REQUIREMENTS MAY EXIST: *"We seek comment regarding how our application of Section 255 should recognize both the resources and regulatory requirements involved in light of their circumstances."*

U.S. Can Be Leader in Global Markets

UCPA recognizes that there are millions of individuals with disabilities worldwide, with functional differences in speech, hearing, vision, movement, manipulation, and interpretation of information. According to the World Institute on Disability, Berkeley, CA there are more than 500 million persons worldwide who have disabilities, including 55 million who are blind, 70 million who are deaf, and 160 million with mobility impairments. Not being able to access the 21st century's emerging global telecommunications networks will cripple advances being made in independent living for such individuals.

Strong regulations resulting from FCC-based requirements can influence global markets. UCPA recognizes that access to communication networks that are globally linked for individuals with disabilities will be subject to wide variances from country to country due to differing regulatory and monopoly regimes. However, UCPA notes that living standards, access to jobs, educational opportunities, social experiences and all facets of human life are likely to be impacted by lack of telecommunications access for persons with disabilities without such guidance.

PARAGRAPH 21 OF THE NOTICE ASKS ABOUT THE TERMS "ACCESSIBLE TO" AND USABLE BY" AS TAKEN FROM THE ADA: *"We believe that Section 255 only reaches those aspects of accessibility to telecommunications that equipment manufacturers and service providers subject to the Commission's authority have direct control over, such as the design of equipment or the manner in which a telecommunication service is delivered to users. .. [the] physical aspect of accessibility is properly subject to regulations adopted by the Department of Justice to implement the ADA ... We seek comment on these issues."*

Invoking ADA Cannot Be An Excuse for Non-Compliance

UCPA believes it is clear where the enforcement regulations for ADA's Titles II and III begin and where the FCC's responsibility begins under Section 255. UCPA urges the FCC to reference these two ADA titles in its rulemaking with a caveat that how a customer or purchaser of equipment and services

may utilize a product or service does NOT relieve the provider of services or manufacturer of equipment from the responsibility of ensuring that in the design, development and fabrication processes that accessibility has to be addressed. UCPA also urges coordination of responsibility in referral of complaints to the Department of Justice which enforces ADA so that consumers with complaints do not become confused by which agency has the responsibility for enforcement.

Implicit in design processes and in marketing analysis and expansion, is addressing how customers utilize products and services: to permit a manufacturer to say accessibility can't be done because purchasers of pay phones always put them out of reach or in inaccessible locations cannot be allowed as an excuse to fail to design for those with hearing and speech and motor disabilities, for instance.

UCPA does not believe that it is a great onus on a covered entity to envision where, how and in what manner products and services are used by customers as this is a natural part of market research. The point of universal design is to design for a broader range of users' functional capacities and not to seek ways out of responsibility for addressing disability issues.

For instance, if a voice-activated network telephony feature becomes part of a local government's information access system, the fact that this service cannot be accessed by the nation's Telephone Relay Services for speech and hearing disabled individuals means there is violation of both statutes: the local government purchase-provider is violating Title II of ADA and the seller of the system is violating the Telecommunications Act Sec. 255 because it is unusable. If however, the service were built to be usable but the purchaser disables the accessibility features, or refuses to acknowledge the need for them, it is clear that the violation would only be under ADA at the purchaser end.

PARAGRAPH 24 OF THE NOTICE SEEKS COMMENT ON COMPATIBILITY WITH EXISTING PERIPHERAL DEVICES OR SPECIALIZED CUSTOMER PREMISES EQUIPMENT COMMONLY USED BY INDIVIDUALS WITH DISABILITIES TO ACHIEVE ACCESS.

Define CPE Broadly Using Existing Disability Technology Language

UCPA urges the FCC to incorporate a definition of Consumer Premises Equipment (CPE) that addresses a wide range of possible solutions that are and will likely be utilized by persons with disabilities. This would mean incorporating a definition currently in use under another statute for "assistive technology device". This is defined *"as any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities."*²

PARAGRAPHS 26, 27 and 28 OF THE NOTICE ADDRESS THE REQUIREMENTS OF SECTION 251(a)(2) ABOUT NETWORK FEATURES, FUNCTIONS OR CAPABILITIES IN REGARD TO SECTIONS 255 OR 256.

² Technology-Related Assistance for Individuals with Disabilities Act; 29 U.S.C. 2201-2217; P.L. 103-218, Section 3 of the Act; 34 CFR 345.10.

Importance of Secs. 255/6 Relation to Section 251

'Section 251 Interconnection' specifically states that telecommunications carriers must "*not install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to Sections 255 or 256*". While many network features, functions and capabilities are already known as part of telecommunications services provision, it is likely that additional features, functions and capabilities will emerge and be made available -- or installed -- by telecommunications carriers as new technology emerges, as older technologies converge and as new companies enter 'local competition'. For these reasons, UCPA urges and recommends the Commission to (1) emphasize and highlight the link to Sec. 255 and 256 mandates with Section 251 and to (2) broadly define network features, functions or capabilities as installed services, particularly when unbundling or rebundling of services occurs.

The rulemaking should reference the mandate found in Section 255 (e) of P.L. 104-104 and draw attention to the fact that the 'Access Board is required to review and update guidelines for standards periodically' as this is not a fixed and one-time standards development activity and is intended to be an ongoing process conducted by The Access Board. UCPA understands that the proceedings of The Access Board are subject to public review through a hearings and consensus-making process that could permit positive synergies in standards development.

UCPA notes that Section 256 does not include a prohibition on a private right of action and thus this section's requirement for coordination for interconnectivity, as it addresses network capabilities and services used by individuals with disabilities, is enforceable under existing Section 207 of the Act and likely under other sections that give FCC enforcement authority.

Also, inasmuch as Telecommunications Carriers are defined as providers of telecommunications services, UCPA notes that the Act defines such services "... *[means] the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.*"

UCPA therefore recommends the Commission to broadly interpret who be among the range of telecommunications carriers and providers of telecommunications services as it is likely there will be new and hybrid carriers who will sell telecommunications services for a fee to the public using new and interesting facilities.

UCPA urges the Commission to define Communications Accessibility to mean extending the same services to people with disabilities that are extended to other people in receiving the goods, services, facilities, privileges, advantages, or accommodations offered by an entity providing a service or product via the electronic communication information infrastructure.

PARAGRAPH 34 OF THE NOTICE ADDRESSES THE ISSUE OF SETTING FORTH ACCESSIBILITY REQUIREMENTS ON A SERVICE-BY-SERVICE BASIS.

Service Specific Rules Will Assist in Expansion of Universal Design

UCPA urges the Commission to establish service-specific rules given the rapid pace of technological change but to not fall into the trap of "disability" specific rulemaking. It is not clear how to UCPA what

is meant by service here: however, persons with speech disability encounter significant barriers with common elements of service such as accessing "O" operator assistance, "411 directory assistance" and "911" and "E911" services. More than two thirds of persons with speech disability who use electronic augmentative communication devices ("voice prostheses") have reported disconnection ("hang up") when they try to make calls. Such calls include disconnection when making longdistance, local, intrastate, 800, 888, and 900 calls, in addition to 911 and 411 calls. Although this group rarely makes calls to Television Pay Per View or Television Shopping Services, disconnections do occur and there is a general sense that such service should be more responsive to those with speech disability. Persons with hearing disabilities and deafness report similar problems in trying to utilize TRS with such services. Persons with vision disability report inability to use "Yellow" and "White" pages service as they are available only in print.

UCPA reminds the Commission that some services and features of products and services that are provided for the general market are also likely to make the product or service usable by a person with a certain disability. For instance, features such as redial, auto-dial, large buttons, speakers in phones, etc. are enhancements to the basic telephone device which currently permit use by persons with speech disabilities who use augmentative communication devices. Similarly, voice-activated services in the network can be a boon to persons with vision or fine and gross motor disabilities.

UCPA believes that the rulemaking must state that individuals with disabilities shall pay rates no greater than the rates paid for functionally equivalent services with respect to such factors as the duration of the call, product or service, the extent of technical connectivity, the time of day and geographic distance involved in achieving the call, product or service or other factors associated specifically with a service.

Similarly, there must be no denial of access to networks, products and services through unfair policies, practices or other procedures.

PARAGRAPH 35 OF THE NOTICE SEEKS COMMENT ON FCC WORKING IN CONJUNCTION WITH THE ACCESS BOARD

UCPA recommends the following:

That the FCC

- provide the Access Board with a record from this proceeding;
- adopt and periodically review any guidelines the Access Board generates.

PARAGRAPH 37 OF THE NOTICE SEEKS COMMENT ON ESTABLISHMENT OF PROCEDURAL RULES FOR COMPLAINTS

Make All Avenues of Complaint Accessible to Persons With Disabilities

UCPA believes that individuals with disabilities should be able to pursue all available avenues for filing complaints that are currently, or which become available, to all other individuals and entities in filing

complaints. Such avenues should be made accessible to persons with disabilities in the broadest sense of the meaning of access and that complaints should be handled rapidly, efficiently and effectively.

CONCLUSION

The need for parity in working with the FCC and to have a rulemaking on Section 255 is paramount because society has tended to isolate and segregate individuals with disabilities and subjected them to unequal treatment based on characteristics that are beyond the control of such individuals which resulted from stereotypes and assumptions not truly indicative of the ability of such individuals to participate in, and contribute to, society. Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally. The cost to the United States has been billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

Because the new information and electronics communications technologies will transform, in particular, the content and conduct of work, the communications accessibility needs of individuals with disabilities will be critical to ensuring equal employment opportunity. Although disability is not an indicator of poverty, UCPA reminds the Commission that consumers with disabilities are among the poorest in the nation. Only 23.2 percent of persons with severe disabilities who are working aged (ages 21 to 64) are employed. The unemployment rate among those who are "unable to see words and letters" is 75 percent. Among those who are "unable to hear a normal conversation" 42 per cent are unemployed. And among those with severe speech disability or "unable to have speech understood" 76 percent are unemployed.³

Furthermore, families headed by a member with a disability remain among the poorest in the nation.⁴ While families headed by a member with a disability represent 4.5 percent of all poor families in 1988, their poverty rate remains the highest, at 45 percent. Family composition also has a major effect on poverty status: married-couple families without children headed by a person with a disability experience a poverty rate of 18 percent, but single-parent families headed by a person with a disability had a poverty rate of 67 percent.

Although presence of disability is not an indicator of poverty, millions of persons with disabilities live in low-income households. As the marketplace for telecommunications services changes, **and because changes in the network are "engineering driven"**⁵, the need for universal design of products and services becomes ever more apparent if persons with disabilities are to have equal access to the services and products the networks provide. Persons with disabilities cannot afford to play catch up with

³ From "Americans with Disabilities 1991-92", by the "U.S. Department of Commerce Economics & Statistics Administration, Bureau of the Census report, 1993.

⁴ General Accounting Office (GAO) study released on September 10, 1992.

⁵ Asserted by Edwin D. Young III, Vice President External Affairs and Associate General Counsel, Bell Atlantic, Virginia, on the NYNEX-Bell Atlantic Merger Briefing, October 11, 1996, Arlington, VA.

technology through use of adapted devices at the CPE end or be left out because the network doesn't talk to or hear them. The requirements of Sec. 255 establish a process of design that allows persons with disabilities to enter the new age of telecommunication that the Act promotes.

Because of the significance of the Act the FCC must consider providers of telecommunications services in broadest sense and act to make communications access comprehensive through addressing CPE and network infrastructure in relation to Sec. 255. This can be accomplished through rules which establish that licensors and licensees are equally responsible, through harmonization of international standards, through defining disability broadly and functionally, by asserting an ongoing obligation, through accurate measuring of costs and resources necessary in ascertaining what is readily achievable. Furthermore, understanding the relationship to ADA requirements and defining CPE broadly will further the intent of the statutory purpose. Universal design will be furthered by an understanding of the critical importance of Secs. 255 and 256 in relation to Section 251 and through developing service specific rules.

Adoption and periodic review of Access Board guidelines and making all avenues of complaint accessible to persons with disabilities will go a long way to further the integrity of the rulemaking.

On behalf of United Cerebral Palsy Associations,

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